Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE
UNITED STATES

ROVILMA DIAMOND,

Petitioner,

v.

COLONIAL LIFE AND ACCIDENT
INSURANCE COMPANY

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

I. Where the Report and Recommendation fails to address an issue raised on Summary Judgment, and briefed by both parties, is the Court justified in dismissing the causes of action not addressed by the Magistrate without further consideration, analysis, or justification?

II. In light of the 1991 amendments to the Civil Rights Act of 1964, can the shifting burden test be used, at Summary Judgment, to dismiss a Title VII case where the Plaintiff has established a prima facie case of discrimination?

III. Should a pretextual non-discriminatory reason for an adverse employment action, offered by a Defendant be considered evidence of discriminatory intent on the employer's part?

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Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003)

Hill v. Lockheed Marin Logistics Management, ___ F.3d ___, 2004 WL 25018 (4th Cir. 2004).

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 807 (1973).

PriceWaterhouse v Hopkins, 40 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989)

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000)

Texas Dep't Comm. Affairs v. Burdine, 450 U.S. 248, 252-53 (1981)

Statutes

42 U.S.C. 2000e-2(m).

42 U.S.C. 2000e-5(g)(2)(B).

OPINIONS BELOW

The Court of Appeals issued a Published Opinion in this case, affirming the decision of the District Court, which granted Colonial's Motion for Summary Judgment. A copy of the Published Opinion is included in the Appendix, as is the Order of August 4, 2004 by Judge Wooten, United States District Court Judge.

JURISDICTION

On July 25, 2005, the Appeals Court for the Fourth Circuit affirmed the District Court's Dismissal of Ms. Diamond's case upon the Defendant's Motion for Summary Judgment. This Court Has Jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AT ISSUE

None.

STATE STATUTORY PROVISIONS AT ISSUE

None

STATEMENT OF THE CASE

The Petitioner, Ms. Diamond, is an African American woman who graduated from Hampton University in 1992, with a degree in merchandising (marketing and sales). She worked for Colonial through a temporary service, mainly as a Customer Services Rep./Specialist. In 1994 became a full-time Customer Service Specialist, responsible for Colonial policies. In July 1995, she was promoted to Disability Claims Specialist. Concurrent with her work, Diamond enrolled in a Master's program in Public Administration, covering financial administration, personnel administration, and ethics. She completed an MA in Public Administration in January 1998. In January 1999, Diamond was promoted to Senior Customer Care Specialist in the Disability Unit of the Claims Department (where she had been a claims specialist since 1995), where she supervised several claims specialists, and performed some duties of the department manager. For example, she went to a meeting with the La. Ins. Commission in place of the manager, Mr. Stober, and performed well.

In January of 2000, Briegh Carroll, a specialist under Ms. Diamond, discovered that Diamond had put a "quit payment" on an assignment. Carroll exclaimed (about Diamond) "That fucking bitch. I hate her guts. I could just kill her ass." Mr. Stober, Diamond's Manager, heard the outburst. Carroll (white female) said this

to Carmen Farrar (Black female) who was also under Diamond. Stober heard Ferrar agree with Carroll, but not engage in profanity like Carroll. Stober issued a written warning to Carroll, and a verbal to Farrar. He reported the incident, and the discipline to Diamond. He also said that he believed that Carroll's behavior was racially motivated.

At that time (January 2000) Diamond was the only supervisor under Stober in her department. She supervised all the claims specialists. Claims specialists could apply for telecommuter status, which was not a separate position, but was a sought-after status, as it allowed the employee to work from home. The person who decided whether to allow telecommuter status was Stober (Dept. Manager, white male). To telecommute, a specialist had to meet a certain standard for quality and quantity of work. Stober also required that the applicant not be under any discipline. Three women under Diamond applied for telecommuter, Dee Goodman (African American) Carmen Ferrar (African American) and Briegh Carroll (White). As their supervisor, Diamond was aware of each woman's quality and quantity performance records and discipline record.

No African American applicants had been allowed to telecommute in Diamond's division up to that point. Carmen Ferrar applied first, in June of 2000. Stober denied her request, based on the verbal warning that he had given for the incident with Carroll as the basis for denial. Stober wrote to

Ferrar, stating "no one under any circumstances will be looked at for telecommuting if they have any disciplinary issues." Ms. Carroll applied for the telecommuter position next. Stober had told Diamond that Carroll was not eligible due to the written warning he had given her. Diamond also knew that Carroll had not met the quantity or quality standards required for telecommuting. Yet, Stober granted Carroll's application.

Dee Goodman (African American) then applied for the telecommuter position. Goodman did meet the requirements for telecommuting. She had not been subject to any disciplinary actions. Stober denied Goodman's request. Diamond, having observed all three applicants' successive attempts, the results, and knowing the background and qualifications for each applicant, concluded that, if Goodman and Ferrar, who had both satisfied the objective requirements of quantity and quality were to be denied the position based on issues of behavior, Briegh Carroll, who had not even met the objective requirements, ***and*** who had been subjected to harsher discipline (written warning) for behavioral issues, should not have been allowed to telecommute. Diamond concluded that this was a case of racial discrimination.

Goodman made an internal report of discrimination based on the denial, and listed Diamond as a supporting witness. Stober approached Diamond, asking Diamond if she felt that Goodman's claim (race discrimination) was valid. Diamond candidly told Stober that she did,

indeed, see how Goodman would feel that Stober's decision had been racially based.

Goodman had been under the supervision of Ms. Scott, a white Senior/ supervisor. Stober transferred supervision of Ms. Goodman to Diamond after Goodman's discrimination complaint. He told Diamond that records should still show Scott as Goodman's supervisor. Stober called Diamond to a meeting with himself and Ms. Scott. At that meeting, Stober told Plaintiff "I want every single thing that Dee [Goodman] does documented." Diamond questioned his motives, asking Stober "why are we doing this? If she wants to telecommute, why shouldn't we assist her or develop her in that area?" Diamond added "Randy, when you promoted Briegh, or you let Briegh telecommute, and you told Carmen that she was not able to apply for that senior position, I told you then that that was going to open up a can of worms." After that, Stober and Scott continued to meet about Goodman, but excluded Diamond, although she was Goodman's supervisor.

Though Diamond opposed a campaign of heightened supervision over Goodman, she continued to supervise her. Goodman cried at her desk, and at meetings. Diamond observed managers who had asked her to subject Goodman to heightened scrutiny walking back and forth near Goodman, excessively. It was obvious to Diamond that Goodman felt she was being subjected to retaliation. Diamond sought out Mr. Stober and confronted him about the retaliatory work environment. Stober did not deny retaliating.

Instead, he said "well, I can't really tell you what is going on."

In August of 2000, Diamond applied for an open position as an Accident and Health Manager (A&H Mgr.), a promotion for which she was qualified. Around that time, Stober confided in Diamond that members of Colonial's management, over him, had told him to stop hanging around with Black people if he wanted to advance in the company. At that point, Stober had cut Diamond off completely from management meetings about Goodman. He did not support Diamond's application for promotion, although she was qualified. Diamond applied for the position, but was then told that the Colonial was not hiring for that position at that time.

In early 2001, Dee Goodman, broken by retaliatory harassment, resigned. She later sued, alleging race discrimination.

The A&H Mgr. position was posted again in February of 2001. Mr. Glover forwarded the names of the applicants (including Diamond) who had applied for the position the prior year. Ms. Hamrick, who was the Director of the Accident Health and Life Claims Unit at the time, would make the final decision as to hiring. Six applicants interviewed, and Colonial chose Cindy Scott, the (white female) senior who shared supervision of Ms. Goodman with Diamond, and who had not objected to "documenting" every thing that Goodman did when ordered to do so by Stober. The description of qualifications for the A&H Mgr. position had listed "college degree

preferred." Diamond had a Master's degree, whereas Scott had no college degree. Neither had any applicant other than Diamond.

Colonial's policies prohibited employees from applying for new positions within 18 months of hire, transfer, or promotion into the employee's current position. The policy had come into being in 1999. Diamond had been a senior for more than 18 months, while neither Scott nor any other applicant had met the requirement. Despite the fact that Diamond met **all** requirements for the position **and** had been in her position for over 18 months, Colonial had granted special permission for **all** the white applicants to waive the 18 month rule.

Diamond made internal complaints of race discrimination and retaliation to the Colonial in March of 2001. Ms. Halloway's (HR manager) response to Diamond's complaint was to say that there were certain people in managerial positions who shouldn't be there, and to take no further action. Diamond contacted Unum Provident's EEO department, and spoke to Marie Clements, who refused to investigate, stating, in an email, that she thought the matter would best be handled at Colonial. She went to Hamrick, asking why Scott had gotten the position over her. Hamrick told Diamond that she wanted someone who she wouldn't have to "keep my eye on."

In April of 2001, Diamond filed a charge of discrimination with the S.C. Human Affairs Commission, alleging race discrimination. Immediately thereafter, Diamond began to

experience retaliation. Stober began to document when she arrived and left for work and lunch, something he had never done before. Diamond, remembering Stober's reaction to Goodman's discrimination complaint, kept records of the comings and goings of her counterpart, Ms. Morgan, and noted that Stober did not respond to her similar or more tardy behavior, even when Diamond began to bring it to Stober's attention. Stober mentioned vague complaints about Diamond's work, but refused to describe any specifics. Yet, at Diamond's annual review, he did identify specific complaints as unresolved problems. Stober also mentioned at least one complaint which the alleged complainant denied having ever made. Stober stopped briefing Diamond on topics for meetings with her subordinates prior to the meeting, leaving her unprepared. Diamond asked him to return to briefing her prior to meetings, but he refused. Stober stopped notifying Diamond which workers had been granted leave or were sick, leaving Diamond was unaware of missing workers. She couldn't timely shift their workloads. Stober also stopped speaking to Diamond directly, as he continued to address all other workers in the division. He began to appear by Diamond's workstation more often, subjecting her to the heightened surveillance she had observed in Goodman's case the year before. Stober held a review meeting at which he demanded that, without preparation or notice, Diamond give reports on broad areas. He tried to solicit negative